

JUN 1 1983

No. 82-1798

ALEXANDER L. STEVENS  
CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

LOUIS E. DRIGGERS, *et al.*,

*Petitioners,*

v.

SOUTHERN COOPERATIVE DEVELOPMENT FUND, *et al.*,  
*Respondents.*

On Writ Of Certiorari To The United States  
Court Of Appeals For The Eleventh Circuit

**OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI**

JAMES W. JONES

*Counsel of Record*

CHRIS R. OTTENWELLER

STEVEN J. HOFFMAN

ARNOLD & PORTER

1200 New Hampshire Avenue, N.W.

Washington, D.C. 20036

(202) 872-6700

*Of Counsel:* *Attorneys for Respondents*

MORRIS W. MILTON

WILLIAMS & MILTON

1327 Ninth Street, South

St. Petersburg, Florida 33705

(813) 822-4707

## TABLE OF CONTENTS

	Page
<b>STATEMENT OF THE CASE .....</b>	<b>1</b>
<b>SUMMARY OF ARGUMENT .....</b>	<b>6</b>
<b>ARGUMENT .....</b>	<b>7</b>
<b>CONCLUSION .....</b>	<b>10</b>

## TABLE OF CASES AND AUTHORITIES

	Page
<b>CASES:</b>	
<i>Broward County v. Narco Realty, Inc.</i> , 359 So. 2d 509 (Fla. Dist. Ct. App. 1978) .....	9
<i>Creative Environments, Inc. v. Estabrook</i> , 680 F.2d 822 (1st Cir.), cert. denied, 103 S.Ct. 345 (1982) .....	7
<i>Village of Arlington Heights v. Metropolitan Housing Development Corp.</i> , 429 U.S. 252 (1977) .....	8
<i>Village of Euclid v. Ambler Realty Co.</i> , 272 U.S. 365 (1926) .....	8
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356 (1886) .....	8
<b>STATUTES:</b>	
42 U.S.C. § 1981 .....	5
42 U.S.C. § 1982 .....	5
42 U.S.C. § 1983 .....	4-5
Manatee County Planning Act, ch. 63-1599, Special Acts of Florida .....	4

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

No. 82-1798

LOUIS E. DRIGGERS, *et al.*,

*Petitioners,*

v.

SOUTHERN COOPERATIVE DEVELOPMENT FUND, *et al.*,

*Respondents.*

On Writ Of Certiorari To The United States  
Court Of Appeals For The Eleventh Circuit

**OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI**

Respondents-plaintiffs Southern Coopérative Development Fund, Inc.,<sup>1</sup> Small Farm Development Corporation, Manatee County Community Development Corporation, and Herman L. Rutledge hereby submit this brief in opposition to the petition for writ of certiorari which seeks review of the decision of the United States Court of Appeals for the Eleventh Circuit, as reported at 696 F.2d 1347.

**STATEMENT OF THE CASE**

This case involves plaintiffs' efforts to develop a non-profit, agricultural cooperative project in Manatee Coun-

---

<sup>1</sup> Pursuant to Rule 28.1, respondents state that Southern Cooperative Development Fund, Inc. is affiliated with Southern Development Foundation.

ty, Florida for the benefit of minority and low-income persons who wish to own and operate small family farms. Southern Cooperative Development Fund (SCDF) is involved in creating business, employment and housing opportunities for low-income and disadvantaged persons. With the assistance of the federal government and private sponsors, SCDF developed the Family Farm Cooperative Program (FFC Program) for the purpose of fostering the development of agricultural cooperative communities as a means of alleviating rural poverty and the decline of the small family farm.<sup>2</sup> Working with plaintiffs Small Farm Development Corporation and the Manatee County Community Development Corporation, SCDF undertook development of an FFC Program in Manatee County, one of three sites initially selected for development.

To initiate the Manatee County project, SCDF purchased a 1,631 acre tract of land in the rural part of the County which was zoned for agricultural use. SCDF investigated the applicable land use requirements in Manatee County, hired expert planners to prepare the necessary applications, including a preliminary subdivision plat, and worked through the Manatee County Planning Department to obtain necessary approvals. Since the FFC Program contemplated the ultimate division of the project property into small, individually owned family farms, the project involved a subdivision under local law. Consequently, a prerequisite to development of the project was approval by the Manatee County Board of County Commissioners of a preliminary subdivision plat.

---

<sup>2</sup>Four agencies of the federal government (the Departments of Agriculture, Commerce, and Labor, and the Community Services Administration) pledged financial support for the FFC Program in the form of grants and low-interest loans. SCDF arranged private financing for the program through The Ford Foundation and the Equitable Life Assurance Society of the United States.

SCDF encountered no difficulty in working with the Planning Department and other County agencies during the review process, and all of the various agencies, including the County Planning Commission, found that SCDF's application satisfied all relevant County regulations. (A-4, A-5.)<sup>3</sup> SCDF did, however, encounter substantial public opposition to the proposed project. The agricultural cooperative was to be located near the small, all-white community of Myakka City, and the residents of Myakka City vehemently objected to the project, appearing at public hearings held by the Board of County Commissioners and contacting individual Commissioners to complain that the project was a federal "give away" for low-income persons and a waste of taxpayers' money. (A-5.) The opposition also took on racial overtones, reflecting the fact that a majority of the participants in the cooperative would be blacks and Spanish Americans. (A-5.)

SCDF had hoped that the County Commissioners would consider SCDF's application on the same basis as other subdivision applications, but that did not prove to be the case. Complaining that the project was not "normal," the Commissioners inquired into matters which were unrelated to the requirements of the Manatee County subdivision regulations. Public comments such as the following by Commissioner Driggers, who represented the Myakka City area, were typical:

"[We] have been asked to approve a subdivision, a preliminary plan for a subdivision, that is completely different. . . . I am sure it is not going to be a typical subdivision. . . . It is different and they have met the requirements as far as we know of the subdivision requirement except it is completely different and I think this Board should have some criteria that we

---

<sup>3</sup> Unless otherwise identified, citations are to the Appendix to the Petition for Writ of Certiorari.

can, if we are not in agreement with the subdivision as outlined, we have the right to a denial.

\* \* \*

"I think it is up to the developer to present to this Board the full scope of his operation, exactly what he intends to do. I know this is contrary to the requirements of the subdivision requirement. This is not a normal subdivision . . ." (App. to Brief for Appellees at 176-77, 204.)

Notwithstanding the fact that the County's Planning Department and Planning Commission found that SCDF's application complied with the subdivision regulations and recommended that it be approved, the County Commissioners refused such approval when the application first came up for review. The Commissioners instead ordered the Planning Department to undertake a new study of the application. (A-4, A-5.) The Planning Department duly undertook a new study and again concluded that SCDF's application satisfied all legal requirements for plat approval. (A-5.) However, at a second hearing the Commissioners unanimously voted to deny the application without providing any statement of their reasons, an omission which in itself violated the Manatee County Planning Act, ch. 63-1599, Special Acts of Florida. (A-6.)

Plaintiffs thereupon filed this lawsuit alleging that the Commissioners' action was in violation of Florida law, was racially motivated, and deprived plaintiffs of rights protected under the United States and Florida Constitutions.<sup>4</sup> Plaintiffs' initial discovery established that

---

<sup>4</sup> Plaintiffs' complaint raised four counts. Count I alleged that the Commissioners' disapproval of the subdivision plat application, which admittedly complied with the subdivision regulations, violated plaintiffs' right to due process under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. Counts II and III also asserted federal civil rights claims, charging that the Commissioners' refusal to approve the plat was motivated by a prejudice

the Commissioners disapproved the project knowing that it complied with the County's subdivision regulations. (A-6.) Plaintiffs thus moved for partial summary judgment on Count I of their complaint, which alleged a derogation of plaintiffs' due process rights in violation of 42 U.S.C. § 1983, and on Count IV, which alleged a violation of plaintiffs' rights under Florida law and the Florida Constitution.

In response to plaintiffs' motion, the district court issued a preliminary ruling advising the Commissioners that under Florida law they have a legal duty to approve a subdivision plat application if it satisfies the requirements of duly promulgated subdivision regulations. (A-38, A-39.) The district court gave the Commissioners an opportunity to conform their conduct to the law, but the Commissioners refused to do so. They again rejected SCDF's application, this time adopting a statement of reasons which, in the Eleventh Circuit's words, "was apparently prepared by counsel in anticipation of this litigation." (A-7 n.2.)

Following these actions by the Board of County Commissioners, the district court granted plaintiffs' motion, finding that there was no dispute as to any genuine issue of fact regarding SCDF's compliance with the subdivision regulations, that under Florida law the Commissioners had an administrative duty to approve the project, and that the Commissioners' failure to comply with this duty and permit the development of SCDF's project violated plaintiffs' federal and state constitutional rights. (A-28.) The district court ordered Manatee County to issue preliminary plat approval for the project. (A-33.) The

---

against racial minorities and low-income persons in violation of 42 U.S.C. §§ 1981, 1982, and 1983. Count IV raised a pendent claim under Florida law asserting that the Commissioners' actions violated plaintiffs' state statutory and constitutional rights.

Eleventh Circuit affirmed the district court's judgment and order.

#### SUMMARY OF ARGUMENT

Petitioners have not presented a substantial question for review. The Eleventh Circuit's opinion upholding the district court's judgment and order is not in conflict with cases from other circuits. Contrary to petitioners' characterization, this case does not involve a "run-of-the-mill" dispute between a developer and a local government. It involves serious issues of racial discrimination, gross disregard by Manatee County of its own established rules and regulations, and admitted deviation from the normal course of subdivision review because SCDF's project was "different." Both the district court and the Eleventh Circuit recognized that the County Commissioners flagrantly violated plaintiffs' federal and state rights when they ignored the recommendations of their own staff, the findings of the County Planning Commission, the preliminary order of the district court, and their own rules and regulations. The lower courts also recognized that this case did not involve a challenge to local land use ordinances, but rather the selective disregard by a local government of its own laws.

Additionally, the petition should be denied because the district court's judgment is supported by a nonfederal claim that has not been presented for review in this Court. Specifically, the district court's order is independently supported by its findings on Count IV that the Commissioners violated Florida law and the Florida Constitution in denying plat approval. Manatee County has not sought review of that decision in this Court; therefore, the district court's relief must stand irrespective of what action is taken on the petition for writ of certiorari.

## ARGUMENT

Petitioners have not presented a substantial question for Supreme Court review. It is obvious that this case is distinguishable from the "run-of-the-mill" land use dispute presented by *Creative Environments, Inc v. Estabrook*, 680 F.2d 822 (1st Cir.), cert. denied, 103 S.Ct. 345 (1982). Plaintiffs brought this action in federal court to assert claims of racial discrimination, unequal treatment, and a knowing and egregious disregard by Manatee County of its own laws. Such claims traditionally have been asserted under the federal civil rights laws. For the sake of judicial economy, plaintiffs appended to their federal claims a state law count which challenged the Commissioners' actions under Florida law.

In contrast, *Creative Environments* concerned a dispute between a commercial developer and a town planning board in which the board was accused only of "distort[ing]" state law. 680 F.2d at 829. The First Circuit did not have before it the type of egregious conduct and racial claims involved in the instant action. Indeed, the First Circuit indicated that situations involving "gross abuse of power, invidious discrimination, or fundamentally unfair procedures" would pose entirely different questions. 680 F.2d at 832 n.9.

In affirming the decision of the district court, the Eleventh Circuit had before it a record which showed a flagrant disregard by the County Commissioners of their own rules and regulations, the recommendations of their staff, the findings of the County's own Planning Commission, and a written opinion of the district court. Indeed, in deposition testimony and statements in public hearings, each Commissioner conceded that SCDF's plat application satisfied all of the legal requirements specified in the County's subdivision regulations. (App. to Brief for Appellees at 171, 335, 343-44, 372, 395.) The record also

shows that the Commissioners' actions were taken in the context of a highly controversial project (*e.g.*, *id.* at 184, 191-92, 199-203, 218, 282-86, 300) which the Commissioners themselves labeled as "different" and treated as different (*e.g.*, *id.* at 176-77, 203-09). The Eleventh Circuit's decision that plaintiffs suffered a violation of their federal constitutional rights in such circumstances is fully consistent with prior decisions of this Court. See, *e.g.*, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977); *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886).

Further, Manatee County has not presented a substantial question with respect to the standards of review applied by the district court and the Eleventh Circuit. As the Eleventh Circuit recognized (A-11, A-12), this case does not involve a challenge to a legislative act of zoning or any other exercise of the County's legislative powers. Plaintiffs are not contesting the validity of Manatee County's land use ordinances; rather, they are challenging conduct by which the County Commissioners openly disregarded the ordinances and regulations in effect in Manatee County. Thus, notwithstanding petitioners' assertions, this case does not involve restrictions on the powers of local governments to control land use development. It does involve, however, restrictions on the ability of local government officials to ignore and defy their own laws when faced with controversial and unpopular projects. In sum, the matter of local legislative discretion simply was not an issue in this case. Thus, the zoning decisions on which petitioners rely, such as *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), are entirely inapposite.

Finally, the district court's order is independently supported by a state law claim (Count IV) which has not been presented for review in this Court. The district court

found that the Board of County Commissioners violated a duty established by Florida law when it disapproved SCDF's plat, which, by the Commissioners' own admissions, satisfied all legal requirements imposed by the County's subdivision regulations.<sup>5</sup> In the exercise of its pendent jurisdiction, the district court further found that the Commissioners' actions violated plaintiffs' rights protected by the Florida Constitution and Florida law. Petitioners have not sought review of this independent basis for the court's declaratory judgment and injunctive order. Thus, the order directing the Commissioners to issue preliminary plat approval must stand irrespective of what action is taken on the petition for certiorari. In such circumstances, this Court should decline to exercise its discretionary power of review.

---

<sup>5</sup> In so deciding, the district court relied on the leading Florida decision on subdivision review, *Broward County v. Narco Realty, Inc.*, 359 So. 2d 509 (Fla. Dist. Ct. App. 1978). (A-29, A-38.) The Eleventh Circuit agreed that *Broward County* was controlling as a matter of Florida law. (A-14.)

**CONCLUSION**

For the foregoing reasons, respondents-plaintiffs respectfully request the Court to deny the petition for writ of certiorari.

Respectfully submitted,

**JAMES W. JONES**

*Counsel of Record*

**CHRIS R. OTTENWELLER**

**STEVEN J. HOFFMAN**

**ARNOLD & PORTER**

**1200 New Hampshire Avenue, N.W.**

**Washington, D.C. 20036**

**(202) 872-6700**

*Attorneys for Respondents*

Of Counsel:

**MORRIS W. MILTON**

**WILLIAMS & MILTON**

**1327 Ninth Street, South**

**St. Petersburg, Florida 33705**

**(813) 822-4707**

Dated: June 1, 1983